IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT APPEAL NO.1931 OF 2002
AND
W.A.M.P.NO.3304 OF 2002

1. The State of Tamil Nadu, rep. by
its Secretary to Government,
Environment & Forest Department,
Fort St.George,
Chennai-600 009.

2. The District Forest Officer,
Tiruppatur Division,
Tiruppatur, N.A.A.Division. .. Appellants

-Vs-

M/s.Nishath Essential Oil Distillery,
rep. by Office Manager,
8-2-681/A/1/C, Road No.12,
Banjara Hills,
Hyderabad-500 034. .. Respondent

For Appellants :: Ms.Selvi George
for V.S.Sethuraman,
Spl.G.P.(F)

For Respondent :: Mr.K.S.Natarajan

Prayer: This Writ Petition is filed under Article 226 of the Constitution, praying for issuance of Writ of Certiorarified Mandamus for the reliefs as stated therein.

:JUDGMENT

F.M.IBRAHIM KALIFULLA, J.
We heard the learned counsel for the Appellant as well as the Respondent.
The short question that arises for consideration in this Writ Appeal is as to the interpretation of Clause 30 of Sandalwood Sale Notice Conditions

in respect of Tirupattur Forest Sandalwood Sale Depot in North Arcot Ambedkar District in Rc.No.4255/96 S.

2. The said Clause 30 reads as under:

"30.The successful bidder shall not withdraw his bid provided orders accepting his bid are issued within sixty days from the date of sale. If the successful bidder withdraws his offer the sandalwood will be resold at his risk and any loss that may be sustained by the Government on that account of such resale shall be made good by the defaulter but he will not be entitled to any profit that the Government may derive from such resale."

3. As per the said clause, a successful bidder cannot withdraw his bid if his bid had been accepted within sixty days from the date of sale and orders accepting his bid are issued within the said time limit. Therefore, in regard to the acceptance of the bid, if the orders are not issued within the time limit of sixty days, the successful bidder is free to withdraw his bid. In the event of successful bidder withdrawing his bid, in contravention of the above said condition, then the Sandalwood would be resold at his risk and any loss sustained by the Government on account of such resale should be made good by the defaulter though he will not be entitled to any profit that may be derived by the Government from such resale.

4. In the case on hand, the respondent herein is stated to have submitted his bid pursuant to the said Sale Notice Conditions in the auction held on 19-6-1996. The appellant claims that the bid was confirmed in favour of the respondent on 15-8-1996, that a telegram to that effect was sent to the respondent on 16-8-1996, that post copy in confirmation of the said telegram was sent to the respondent and the same was acknowledged by it on 22-8-1996, that the details of the payment orders were issued on 21-8-1996 which was acknowledged by the respondent on 26-8-1996, that no payment was made by the respondent as per Clause 9 of the Sale Notice Conditions and thereby the default conditions contained in the said clause got attracted, that necessary notice to comply with the default conditions was issued on 6-11-1996 and that only thereafter, by a telegram dated 26-11-1996, the respondent sought for cancellation of the confirmation orders as the same came to be issued beyond 60 days time. Thereafter, the appellant issued a show cause notice dated 26-12-1996 and followed it by a letter dated 28 -3-1997, invoking condition No.9 of the Sale Notice Conditions and ordered forfeiture of a sum of Rs.13,20,000/- deposited by the respondent and also informing that the lot would be resold at their own risk in public auction.

5. When the said order was challenged in W.P.No.8389 of 1997, the learned Single Judge took the view that the appellant failed to issue the confirmation of bid within the stipulated time limit of 60 days as provided under Clause No.30 of the Sale Notice Conditions and therefore the forfeiture order and invocation of other default conditions cannot be sustained. The learned Judge accordingly set aside the order of the appellant dated 28-3-1997. While reaching the above said conclusion, the learned Judge took note of the fact that the order of confirmation pursuant to the auction held on 19-6-1996 was not communicated to the petitioner within the stipulated time limit of 60 days as the confirmation said to have been made through the telegram dated 1 6-8-1996 was sent to a different address, than the one given by the respondent, which came to be returned by the Telegraphic Authorities, that as per the records, the acceptance of the bid can be said to have been

issued by the appellant only on 26-8-1996 which was beyond 60 days time prescribed under Clause 30 of the Sale Notice Conditions and in the circumstances, the respondent was at liberty to seek for withdrawal of the bid by invoking the said Clause 30 of the Sale Notice Conditions.

5. Ms.Selvi George, learned counsel for the appellant would contend that Clause 30 of the Sale Notice Conditions should be read along with Clause 9 of the said conditions, that under Clause 9, in the event of the bidder failing to stick to the schedule of payment prescribed therein, apart from the money already remitted by the respondent would be forfeited by the Government, the respondent would be at liberty to re-sell the sandalwood in question at the risk of the purchaser holding him liable for all loss while the purchaser would not be entitled for any profit that may be derived from such resale. She would further contend that the expression 'issued' in Clause 30, should be given the literal meaning of 'sent' from the office of the appellant. In other words, according to the learned counsel, the moment the decision of the acceptance of the offer is taken and put into writing within 60 days time prescribed under the said Clause and the communication of the said decision was despatched within the said period from the Office of the appellant by addressing the said communication to the successful bidder by any mode of correspondence either in the form of a telegram or by a postal communication that by itself would be sufficient in so far as the appellant is concerned to claim that the order of acceptance was issued from the office of the appellant. To put it differently, according to the learned counsel, the moment the order of acceptance was sent from the office of the appellant on 15-8-1996 and the telegram was sent on that day or on the next day, namely, 16-8-1996, even if the receipt of the said telegram was on a date after expiry of 60 days time prescribed under Clause 30, it should nonetheless be construed that the order of acceptance was issued within 60 days time as per Clause 30.

6. On the other hand, Mr.K.S.Natarajan, learned counsel appearing for the respondent would contend that unless the order of acceptance is actually served on the successful bidder within the 60 days time prescribed, it cannot be held that the appellant complied with the requirement contained in the said clause.

7. Having heard the learned counsel for either parties, we are of the view that the submissions made by the learned counsel for the appellant cannot be accepted. As found by the learned Judge, there was no dispute that the telegram accepting the bid of the respondent dated 1 6-8-1996 was not sent to the correct address of the respondent. Therefore, if the said telegram cannot be taken as the acceptance of the bid issued by the appellant, then the said factum can be traced only to the communication dated 21-8-1996 by which, the confirmation of the bid came to be made by the appellant. Admittedly, the sale was on 1 9-6-1996, the period of 60 days expired by 18-8-1996.

8. We are of the clear view that the word 'issued' contained in clause 30 cannot be construed in such a narrow sense as contended by the learned counsel for the appellant especially when the consequences of non-issuance of confirmation order casts very severe monetary liability on the successful bidder. The very purpose of providing 60 days time in the said clause, was to provide sufficient time to enable the appellant to take a decision with regard to acceptance of the bid from amongst various bidders. Therefore, when sufficient time was provided in the said clause for performing the said act of acceptance of the bid by issuing a specific order to that

effect, we hold that such an exercise should be carried out strictly in accordance with the terms contained in the said clause and there would be no scope to show any relaxation to any parties. Therefore, when the stipulation is construed in its strict sense, it will have to be held that the word ' issued' used in the said clause will have to be given an interpretation which would sub-serve the interest of both the parties. In our view, the word 'issued' in the present context would only mean 'served'. We say so because unless it is construed in such a manner, then the whole purport of Clause 30 would loose its significance inasmuch as, the consequence of non-acceptance of the bid within the time limit of 60 days should automatically follow on the expiry of the period of limitation prescribed under the said clause. Having regard to the consequences that should follow pursuant to the event of acceptance or non-acceptance of the bid taking place, the happening of such an event should be precise and in our view, there should not be any room for ambiguity for that event taking place in order for the parties to act on the basis of their respective actions. We are therefore, not in a position to accept the contentions of the learned counsel for the appellant that the word 'issued' should be construed to mean 'sent' in order to hold that the issuance of the acceptance of the bid by the appellant on 16-8-1996 would be sufficient compliance of the said clause to invoke Clause 9 of the Sale Notice Conditions to mulct the monetary liability on the respondent.

9. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court reported in AIR 1976 SC 1150 (THE COMMISSIONER OF WEALTH TAX & ANOTHER versus M/S.KUNDAN LAL BEHARI LAL), wherein, the Hon'ble Supreme Court has explained in para 2 as to how the word 'issued' should be construed which reads as under:

"2. The main question on which the High Court decided and which is the only question urged before us for admitting the petition is that the word 'issued' occurring in Sec.13(2A) of the Wealth-tax Act means 'served'. This decision is well supported not only by the decisions of the High Court but also of this Court. In Banarsi Debi V. Income Tax Officer, Calcutta, 53 ITR 100 = (AIR 1964 SC 1742) this Court observed that the expressions 'issued' and 'served' are used as interchangeable terms and in the legislative practice of our country they are some times used to convey the same idea. Accordingly, it was held that the word 'issued' was not used in the narrow sense of 'sent' but that the said expression had received before the Indian Income-tax (Amendment) Act, 1959, a clear judicial interpretation. Subba Rao, J. as he then was dealing with the purpose which the work 'issue' was intended to serve, after referring to Sriniwas v. Income-tax Officer, 3 0 ITR 381 = (AIR 1956 All.657) cited in the judgment under attack and a Bombay decision, observed at page 108, "the intention would be effectuated if the wider meaning is given to the expression 'issued'. The dictionary meaning of the expression issued takes in the entire process of sending notices as well as service thereof. The said word used in Section 34(1) of the Act itself was interpreted by Courts to mean 'served'." (Emphasis applied)

10. In a subsequent judgment of the Honourable Supreme Court reported in 1987 (3) SCC 96 (R.K.UPADHYAYA versus SHANBHAI P.PATEL), the earlier judgment of the Honourable Supreme Court rendered in Banarsi Debi (V) ITO reported in 53 ITR 100 was referred to while dealing with a notice of reassessment issued under Section 147 (b) of the Income Tax Act 1961 and also the other relevant provisions contained in Sections 148 and 149 of the Act.

The Honourable Supreme Court was pleased to hold as under in para 2 of the said judgment.
"2. .... The High Court relied upon the decision of this Court in the case of Banarsi Debi V. ITO where the validity of a notice under Section 34(1) of the Income Tax Act, 1922 and the scope of Section 4 of the Income Tax (Amendment) Act of 1959 by which sub-section (4) was introduced into Section 34 were considered. The Court indicated, keeping the provisions of Section 34 in view, that there was really no distinction between "issue" and "service of notice". Section 34, sub-section (1) as far as relevant provided thus:

34(1) If-
(a) * * *
(b) ... he may in cases failing under clause (a) at any time within 8 years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee,... and may proceed to assess or reassess such income, ... (emphasis supplied)

Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J.P. Janni, I.T.O. v. Induprasad D.Bhatt (72 ITR 595) as also in CIT v. Robert J.Sas (48 ITR 177). The High Court in our opinion went wrong in relying upon the ratio of Banarsi Debi v. ITO (53 ITR 100) in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between 'issue of notice' and ' service of notice' under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under Section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. ...."
(emphasis applied)
11. Though the latter judgment may in the first blush appear as though the word 'issued' will have to be literally interpreted and taken to mean that sending of the notice would be sufficient compliance of the provision, a close reading of the decision particularly the highlighted sentence makes it amply clear that the expression 'issued' when used in a provision along with a stipulation containing a period of limitation, then the said expression can be construed to mean actual 'served' and not merely being 'sent'. If that be so, the expression 'issued' cannot be given a narrow meaning of 'sent', but a comprehensive meaning of 'served' and that such an interpretation alone would serve the purport and intent of that provision. In other words, the term 'issued' when linked with a time limit prescribed in that provision itself, then the said term 'issued' can be interpreted only to mean 'served' and cannot be interpreted in its literal sense of ' sent'. In

the above stated legal position, when the case on hand is analyzed, it will have to be held that the expression 'issued' in Clause 30 of the Sale Notice Conditions can be interpreted to mean as ' served' inasmuch as, Clause 30 specifically provides for the period of limitation of 60 days for the bidder to express his intention to withdraw from the bid in the event of the acceptance of the bid not being specifically conveyed to the bidder within 60 days from the date of sale.

12. It was further contended by the learned counsel for the appellant that in paragraph 9 of the said agreement, there is a specific reference to the confirmation order "reaching" the purchaser. Following lines were quoted and relied on.

"9. .... In calculating overdue period and below fifteen days shall be treated as half a month and any period in excess of fifteen days but below one month shall be treated as a month and further the date on which the purchaser receives the sale confirmation order and the date on which the payment due fall on holidays shall be excluded from these period."

From this, the argument was tried to be developed that if the reaching of the order to the purchaser was specifically mentioned in paragraph 9 and was conspicuously absent in paragraph 13, then it would mean that the word 'issued' was used with a particular intention so as to exclude the concept of "reaching" of the confirmation order to the purchaser. In our opinion, the argument is clearly incorrect and the argument cuts the case of the appellant itself because if in paragraph 9, the concept in respect of the order was in its reaching the purchaser, it could not have been otherwise viewed in paragraph 13. For this reason also, we are of the opinion that the word 'issued' should not be read merely as issued but as 'reaching' also.

13. In the case on hand, even assuming the post copy of the confirmation of the sale was served on the respondent, it was stated to have been served only on 22-8-1996. The communication dated 21-8-1996 which alone can be taken to be the confirmation of the bid as issued by the appellant, was admittedly served on the respondent only on 26-8-1 996. Therefore, there was nothing on record to show that the confirmation of the bid was issued within 60 days as provided under Clause 30 of the Sale Notice Conditions, which governed the present auction.

14. When such was the factual position, the respondent had every right to invoke Clause 30 of the Sale Notice Conditions after 18-8-1996 and seek for withdrawal of the bid made by it. Since the acceptance of the bid was not issued before 18-8-1996 by the appellant and communicated to the respondent before that date, the respondent was free to exercise its right to withdraw the bid under Clause 30 of the Sale Notice Conditions, which they did in their telegram dated 26-11-1996 followed by its letter dated 2-1-1997. Therefore, the appellant had no valid authority to reject the withdrawal made by the respondent nor in resorting to invocation of default conditions as contained in Clause 9 of the Sale Notice Conditions as claimed in its order dated 28 -3-1997.

Having regard to the said position, we do not see anything wrong with the order of the learned Single Judge in having allowed the Writ Petition filed by the respondent. There is, therefore, no scope to interfere with the said order of the learned Single Judge. The Writ Appeal fails and the same is dismissed. No costs. Consequently, W.A.M.P. is closed.

Index: Yes
Internet: Yes
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To

1. The Secretary to Government,
State of Tamil Nadu,
Environment & Forest Department,
Fort St.George,
Chennai-600 009.

2. The District Forest Officer,
Tiruppatur Division,
Tiruppatur, N.A.A.Division.